

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2011-289

ROBYN ELIZABETH ARCHER
550 Chester Pike D-1
Norwood, PA 19074
Registered Nurse License No. RN 603521

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about October 4, 2010, Complainant Louise R. Bailey, M.Ed., RN, in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2011-289 against Robyn Elizabeth Archer (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about August 5, 2002, the Board of Registered Nursing (Board) issued Registered Nurse License No. RN 603521 to Respondent. The Registered Nurse License expired on April 30, 2004, and has not been renewed.

3. On or about October 4, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2011-289, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions

1 Code section 136 and/or agency specific statute or regulation, is required to be reported and
2 maintained with the Board, which was and is:

3 550 Chester Pike D-1
4 Norwood, PA 19074.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about October 26, 2010, the aforementioned documents were returned by the
9 U.S. Postal Service marked "Not Deliverable As Addressed, Unable To Forward".

10 6. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
15 may nevertheless grant a hearing.

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2011-
18 289.

19 8. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
23 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 2011-289, finds
that the charges and allegations in Accusation No. 2011-289, are separately and severally, found
to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$495 as of November 5, 2010.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Robyn Elizabeth Archer has subjected her Registered Nurse License No. RN 603521 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

A. Respondent has violated Business and Professions Code section 2761, subdivision (a)(4), in that her nursing license has been disciplined by the states of Pennsylvania and Virginia. Effective July 28, 2007, pursuant to the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs' Order in a disciplinary proceeding titled *Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Robyn Archer Borrell, R.N., aka Robyn Elizabeth Archer, Docket No. 0613-51-06*, Respondent's nursing license number RN543314 was revoked. The Final Order was based on the following:

i. Respondent committed fraud or deceit in the practice of nursing and engaged in immoral or unprofessional conduct by misappropriating equipment, materials, property, drugs or money from her employer. Specifically, Respondent submitted fraudulent timesheets to her employer between January 2003 and May 2004, totaling 1,892 hours that she did not work, and receiving \$120,000 in wages that she was not entitled to. In addition, 1,669 of those hours were billed at a higher rate of pay by mischaracterizing them as "on call" or "call back." Furthermore, Respondent was criminally charged of "Theft By Unlawful Taking or Disposition," in the Court of Common Pleas of Philadelphia County, *Commonwealth v. Robyn Archer*, Case No. 0592CR2004. Respondent was placed on two (2) years probation and ordered to pay restitution in the amount of \$120,000. The Final Adjudication and Order is attached hereto as **Exhibit A**, and is incorporated herein by reference.

1 B. Effective September 27, 2007, pursuant to an Order issued by the Commonwealth of
2 Virginia, Department of Health Professions, in the proceeding *titled In Re: Robyn Archer Borrell,*
3 *R.N., License No. 0001-169771,* Respondent's license to practice as a professional nurse in
4 Virginia was suspended. The Order was based upon Pennsylvania's Final Adjudication and
5 Order revoking Respondent's license to practice nursing in the Commonwealth of Pennsylvania.

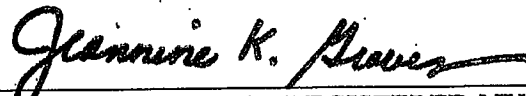
6
7 **ORDER**

8 IT IS SO ORDERED that Registered Nurse License No. RN 603521, heretofore issued to
9 Respondent Robyn Elizabeth Archer, is revoked.

10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
11 written motion requesting that the Decision be vacated and stating the grounds relied on within
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
13 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

14 This Decision shall become effective on January 24, 2011.

15 It is so ORDERED December 24, 2010.

16 
17 FOR THE BOARD OF REGISTERED NURSING
18 DEPARTMENT OF CONSUMER AFFAIRS

19 default decision_LIC.rtf
20 DOJ Matter ID:SA2010101272

21 Attachment:
22 Exhibit A: Accusation
23
24
25
26
27
28

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JANICE K. LACHMAN
Supervising Deputy Attorney General
4 State Bar No. 186131
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7384
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-289**

13 **ROBYN ELIZABETH ARCHER**
14 **aka ROBYN ELIZABETH BORRELL**
15 **and ROBYN ARCHER BORRELL**

A C C U S A T I O N

16 550 Chester Pike D-1
Norwood, PA 19074

17 **Registered Nurse License No. 603521**

Respondent.

18 Louise R. Bailey, M.Ed., RN (Complainant) alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Interim
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 2. On or about August 5, 2002, the Board issued Registered Nurse License Number
24 603521 to Robyn Elizabeth Archer, also know as Robyn Elizabeth Borrell and Robyn Archer
25 Borrell ("Respondent"). The license expired on April 30, 2004, and has not been renewed.

26 ///

27 ///

JURISDICTION

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for the following:

(a) Unprofessional conduct.

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action."

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

///

///

///

///

1 FIRST CAUSE FOR DISCIPLINE

2 (Out-of-State Discipline)

3 7. Respondent is subject to discipline under Code section 2761(a)(4), in that she has
4 been disciplined in the states of Pennsylvania and Virginia as follows:

5 A. Effective July 28, 2007, pursuant to an Order issued by the Commonwealth of
6 Pennsylvania, Bureau of Professional and Occupational Affairs, in a disciplinary proceeding titled
7 *Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Robyn*
8 *Archer Borrell, R.N., aka Robyn Elizabeth Archer, Docket No. 0613-51-06*, Respondent's nursing
9 license number RN543314 was revoked. The Final Order was based on the following:

10 i. Respondent committed fraud or deceit in the practice of nursing and engaged in
11 immoral or unprofessional conduct by misappropriating equipment, materials, property, drugs or
12 money from her employer. Specifically, Respondent submitted fraudulent timesheets to her
13 employer between January 2003 and May 2004, totaling 1,892 hours that she did not work, and
14 receiving \$120,000 in wages that she was not entitled to. In addition, 1,669 of those hours were
15 billed at a higher rate of pay by mischaracterizing them as "on call" or "call back." Furthermore,
16 Respondent was criminally charged of "Theft By Unlawful Taking or Disposition," in the Court
17 of Common Pleas of Philadelphia County, *Commonwealth v. Robyn Archer*, Case No.
18 0592CR2004. Respondent was placed on two (2) years probation and ordered to pay restitution
19 in the amount of \$120,000. The Final Adjudication and Order is attached hereto as Exhibit A,
20 and is incorporated herein by reference.

21 B. Effective September 27, 2007, pursuant to an Order issued by the Commonwealth of
22 Virginia, Department of Health Professions, in the proceeding titled *In Re: Robyn Archer Borrell,*
23 *R.N., License No. 0001-169771*, Respondent's license to practice as a professional nurse in
24 Virginia was suspended. The Order was based upon Pennsylvania's Final Adjudication and
25 Order revoking Respondent's license to practice nursing in the Commonwealth of Pennsylvania.

26 ///

27 ///

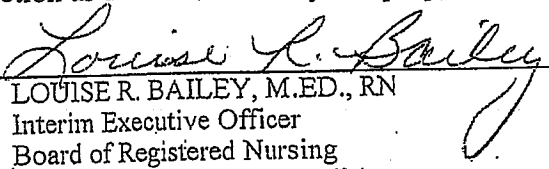
28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged; and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 603521, issued to Robyn Elizabeth Archer, also known as Robyn Elizabeth Borrell and Robyn Archer Borrell;
2. Ordering Robyn Elizabeth Archer, also known as Robyn Elizabeth Borrell and Robyn Archer Borrell, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/4/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2010101272
10609950.doc

Exhibit A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

PROTHONOTARY

2007 JUN 28 AM 11:37

Department of State

BEFORE THE STATE BOARD OF NURSING

COMMONWEALTH OF PENNSYLVANIA, BUREAU OF PROFESSIONAL
AND OCCUPATIONAL AFFAIRS

v.

ROBYN ARCHER BORRELL, RN
(A/K/A ROBYN ELIZABETH ARCHER, RN)
LICENSE NO. RN-543314

DOCKET NO. 0613-51-06
FILE NO. 04-51-07899

FINAL ADJUDICATION AND ORDER

MARY E. BOWEN, RN, CRNP
CHAIRPERSON
STATE BOARD OF NURSING

BASIL L. MERENDA
COMMISSIONER
BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 16th DAY OF July A.D. 2007

K. Diller
PROTHONOTARY

HISTORY

This matter comes before the hearing examiner for the Department of State on a three-count order to show cause filed April 7, 2006, alleging that Robyn Archer Borrell, R.N., License No. RN-543314, (Respondent) is subject to disciplinary action under the Professional Nursing Law, Act of May 22, 1951, P.L. 317, *as amended*, at 63 P.S. §221 *et seq.*, for allegedly having committed fraud or deceit in the practice of nursing; having engaged in immoral or unprofessional conduct; and having misappropriated equipment, materials, property, drugs or money from an employer, all relating to the Respondent having submitted fraudulent timesheets to her employer. By letter dated May 1, 2006, Respondent filed an answer to the order to show cause. This matter was delegated by the State Board of Nursing (Board) to the Office of Hearing Examiners by Board Order dated June 27, 2006.

On July 26, 2006, the Commonwealth filed a Motion for Change of Venue, to have the hearing held in the Philadelphia area, which was granted by the hearing examiner in a Notice of Hearing dated August 1, 2006. Subsequent thereto, on September 5, 2006 the Respondent filed a supplement to her Answer in which she admitted that she had engaged in the conduct set forth in the OSC. Accordingly, on that date, the Commonwealth filed a Motion for Judgment on the Pleadings, which was granted on that date in conjunction with a pre-hearing telephonic conference conducted by the hearing examiner with the parties. During the conference it was also agreed that in light of all the facts having been admitted, fact witnesses were no longer required, which obviated the need to have the hearing conducted in the Philadelphia area.

Therefore, a formal administrative hearing was held, as scheduled on September 7, 2006, in Harrisburg. Shawn E. Smith, Esquire represented the Commonwealth as prosecuting attorney.

The Respondent attended pro se and testified on her own behalf. At the conclusion of the hearing, the Commonwealth recommended that the Respondent should be subject to a five-year suspension, with all but one year stayed in favor of probation. The parties waived the filing of post hearing briefs and the transcript was filed on September 14, 2006. On October 31, 2006, the hearing examiner filed a proposed adjudication and order. On November 15, 2006, the Respondent filed a brief on exceptions. The Board reviewed the record at its January 4-5, 2007 Board meeting.

FINDINGS OF FACT

1. Respondent holds a registered nurse license to practice nursing in the Commonwealth of Pennsylvania, License No. RN-543314. (Board records)
2. Respondent's license is active through April 30, 2008, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Board records)
3. Respondent has been licensed to practice professional nursing since January 10, 2003. (Board records)
4. At all times pertinent to the Factual Allegations, Respondent held a license to practice as a registered nurse in the Commonwealth of Pennsylvania. (Board records)
5. Respondent's last known address on file with the Board is 550 Chester Pike, Unit D-1, Norwood, Pennsylvania 19074. (Board records)
6. Respondent received her nursing degree in June 2000. (Board records; Exhibit R-1)
7. Respondent is also licensed in Virginia, California and Washington, D.C. with the latter two licenses having been inactive since 2002 and the Virginia license being the only other active license of the Respondent. (N.T. 59-60)
8. From January of 2003 through July of 2004, Respondent was employed as a travel nurse by AMN Healthcare, Inc. ("AMN"). (Exhibits B-1 and R-1; N.T. 24, 60)
9. Respondent was on a contract assignment through AMN to work as a registered nurse at Children's Hospital of Philadelphia ("CHOP"). (Exhibits B-1 and R-1; N.T. 60)
10. Respondent was assigned to CHOP's Neonatal Intensive Care Unit ("NICU"). (Exhibits B-1 and R-1; N.T. 61-64)

11. Because of the way CHOP's NICU is set up and the type of care provided, nurses assigned to the NICU only work "straight time," meaning they only get paid for time they are actually working in the NICU. (Exhibit B-1; N.T. 61-64)

12. Nurses assigned to the NICU do not work, or get paid for "on-call time," which is time a nurse spends at the nurse's home available for service on a call-in basis in the case of emergency, but not actually working in the NICU. (Exhibit B-1; N.T. 61-64)

13. Nurses assigned to the NICU, likewise, do not work, or get paid for "call-back time," which is a higher rate of pay (generally time-and-a-half) for nurses who were on-call and then respond to the NICU for duty after being called at home. (Exhibit B-1)

14. Being a contract employee assigned through an agency, Respondent submitted timesheets in order to receive her pay. (Exhibit B-1; N.T. 61-64)

15. Respondent would submit time sheets to her supervisor at CHOP for her supervisor's signature before submitting them to her agency for payment. (N.T. 61-64)

16. Respondent would then submit her timesheets to AMN in order to receive payment. (N.T. 61-64)

17. AMN would then, based upon Respondent's timesheets, bill CHOP for services rendered by Respondent. (N.T. 61-64)

18. Respondent's timesheets were the basis upon which she was paid. (N.T. 61-64)

19. Between January 2003 and May 2004, Respondent submitted time sheets for time she did not actually work. (Exhibit B-1, N.T. 74-80)

20. In May 2004 after having been diagnosed with cancer and prior to being confronted regarding the timesheets, Respondent ceased engaging in her fraudulent activity. (N.T. 57, 65)

21. In late June and early July of 2004, CHOP found a gross discrepancy in the amount of hours being billed by Respondent, and the amount of hours Respondent was actually working. (N.T. 65-66)

22. CHOP conducted an investigation of Respondent's work records, attendance, and billing timesheets for the period between January of 2003 and July of 2004. (N.T. 65-66)

23. Respondent had billed CHOP for numerous hours where she did not actually work at CHOP. (Exhibit B-1; N.T. 74-80)

24. Respondent had billed CHOP for "on-call" time, when Respondent never worked on that basis with the NICU. (Exhibit B-1; N.T. 74-80)

25. Respondent had billed CHOP for numerous hours of the higher pay rate for "call-back time," when Respondent never worked on that basis with the NICU. (Exhibit B-1; N.T. 74-80)

26. In total, Respondent fraudulently submitted timesheets for approximately 1,892 hours that she never worked. (Exhibit B-1; N.T. 74-80)

27. Additionally, Respondent submitted fraudulent timesheets where she had mischaracterized the type of hours worked (i.e., "call back time" instead of "straight time") on approximately 1,669 hours. (Exhibit B-1; N.T. 74-80)

28. Respondent was paid on the basis of these timesheets. (Exhibit B-1; N.T. 74-80)

29. In total, Respondent received approximately \$120,000.00 from CHOP and/or AMN to which she was not entitled during this period. (Exhibit B-1; N.T. 74-80)

30. Including the additional agency fees, AMN billed CHOP approximately \$185,000 for hours Respondent claimed she worked at CHOP. (N.T. 74-80)

31. Respondent would submit timesheets for approval by her supervisor at CHOP, and

then change the timesheets before submitting them to AMN for payment. (Exhibit B-1; N.T. 74-80)

32. CHOP then paid AMN based on bills received from AMN. (Exhibit B-1; N.T. 74-

80)

33. AMN based its bills on Respondent's timesheets. (Exhibit B-1; N.T. 74-80)

34. AMN reimbursed CHOP the \$185,000.00 billed to CHOP based upon Respondent's timesheets. (Exhibit B-1; N.T. 74-80)

35. On January 21, 2005, Respondent received Accelerated Rehabilitative Disposition ("ARD") on the charge of Theft by Unlawful Taking or Disposition, a misdemeanor, in the Court of Common Pleas of Philadelphia County docketed at Commonwealth v. Robyn Archer, No. 0592 CR 2004. (Exhibit R-4; N.T. 67-69)

36. Under the terms of her ARD program, Respondent served two (2) years probation and restitution of \$120,000 to AMN Healthcare at \$2,500.00 per month. (Exhibit R-4; N.T. 46-48, 67-69)

37. Respondent was diagnosed with cancer in May 2004 and received surgical treatment. (N.T. 25)

38. In February 2005 Respondent's cancer returned and the Respondent has not worked since then, having undergone chemotherapy, radiation treatment and interferon treatment. (N.T. 25)

39. For the period of January 2003 to January 2004, while employed at CHOPS, Respondent received a job performance appraisal that indicated that she meets expectations. (Exhibit R-2; N.T. 29-31)

40. From September 2004 to February 2005 Respondent was employed as a nurse at

the Lankenau Hospital, where her performance was rated as an effective employee. (Exhibit R-3; N.T. 32, 73-74)

41. After February 2005, Respondent was no longer able to continue employment because of her cancer and commensurate treatments. (N.T. 69, 73)

42. Contingent upon her health, Respondent is anxious to return to the practice of nursing, to volunteer her time to support other cancer survivors, and to further her professional education by obtaining certification in neo-natal care. (N.T. 39-41, 70)

43. Respondent is remorseful and takes responsibility for her actions, which were prompted by financial difficulties. (N.T. 41, 57, 61-64)

44. Respondent, of her own volition, voluntarily completed an ethics course in nursing practice sponsored by the National Council of the State Boards of Nursing. (Exhibits R-5 and R-7; N.T. 41, 49)

45. As of July 2005, early and with the assistance from her parents, Respondent made the required restitution. (N.T. 47, 51-52, 55-56, 67-69; Exhibits R-4 and R-8)

46. As of August 18, 2006, Respondent had successfully completed her probation and was anticipating taking action to expunge her criminal record. (Exhibit R-4; N.T. 46-47, 67-69)

47. Respondent was served with the OSC and all other pleadings, notices and orders filed of record in this matter, and participated pro se, in the hearing held on September 7, 2006. (Docket No. 0613-51-06)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-4)
2. Respondent has been afforded reasonable notice of the charges against her and an opportunity to be heard in this proceeding. (Findings of Fact, No. 47)
3. Respondent is subject to discipline under the Professional Nursing Law, Act of May 22, 1951, P.L. 317, *as amended*, at 63 P.S. § 224(a)(4) in that Respondent committed fraud or deceit in the practice of nursing. (Findings of Fact, Nos. 8-34)
4. Respondent is subject to discipline under the Professional Nursing Law, Act of May 22, 1951, P.L. 317, *as amended*, at 63 P.S. § 224(a)(9) in that Respondent has been guilty of immoral or unprofessional conduct. (Findings of Fact, Nos. 8-34)
5. Respondent is subject to discipline under the Professional Nursing Law, Act of May 22, 1951, P.L. 317, *as amended*, at 63 P.S. § 224(a)(3) in that Respondent willfully or repeatedly violated 49 Pa. Code § 21.18(b)(4) by misappropriating equipment, materials, property, drugs or money from an employer or patient. (Findings of Fact, Nos. 8-34)
4. The Board is authorized to impose disciplinary or corrective measures pursuant to the Act at 63 P.S. § 224(b).

DISCUSSION

It is consistent with the authority of the Board under the Professional Nursing Law (Law), Act of May 22, 1951, P.L. 317, as amended, 63 P.S. §211 et seq., and the Administrative Agency Law, 2 Pa. C.S. §504, for the Board to adopt the discussion of the hearing examiner if the Board determines it is complete and supported by the evidence and the Law. The Board adopts the discussion and reproduces it below¹ with additional discussion to address Respondent's brief on exceptions.

This action is brought under various provisions of section 14 of the Act, 63 P.S. § 224(a)(3), (4) and (9), which provide in pertinent part as follows:

§ 224. Refusal, suspension or revocation of licenses

(a) The Board may refuse, suspend or revoke any license in any case where the Board shall find that-

* * *

- (3) The licensee has willfully or repeatedly violated any of the provisions of this act or of the regulations of the Board.
- (4) The licensee has committed fraud or deceit in the practice of nursing, or in securing his or her admission to such practice or nursing school

* * *

- (9) The licensee has been guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. The ethical and quality standards of the profession are those embraced by the professional community in this Commonwealth. In proceedings based on this clause, actual injury to a patient need not be established.

* * *

The Commonwealth charged that Respondent, in submitting fraudulent billing time sheets

¹ The Board has made changes to the discussion to correct certain typographical errors and change discrepancies raised in Respondent's brief on exceptions.

from January of 2003 through May of 2004 while employed as a travel nurse by AMN and assigned to CHOP, violated the provisions set forth above. (Exhibits B-1 and R-1; N.T. 24, 58, 64, 65) As indicated earlier, the hearing examiner granted the Commonwealth's Motion for Judgment on the Pleadings in light of the Respondent having admitted to and taken responsibility for her conduct. (Exhibit B-1; N.T. 4-5)

Specifically, Respondent was assigned to CHOP's Neonatal Intensive Care Unit ("NICU"). (Exhibits B-1 and R-1; N.T. 61-64) Because of the way CHOP's NICU is set up and the type of care provided, nurses assigned to the NICU only work "straight time," meaning they only get paid for time they are actually working in the NICU. (Exhibit B-1; N.T. 61-64) Nurses assigned to the NICU do not work, or get paid for "on-call time," which is time a nurse spends at the nurse's home available for service on a call-in basis in the case of emergency, but not actually working in the NICU. (Exhibit B-1; N.T. 61-64) Nurses assigned to the NICU, likewise, do not work, or get paid for "call-back time," which is a higher rate of pay (generally time-and-a-half) for nurses who were on-call and then respond to the NICU for duty after being called at home. (Exhibit B-1)

Being a contract employee assigned through an agency, Respondent submitted timesheets in order to receive her pay. (Exhibit B-1; N.T. 61-64) Respondent would submit time sheets to her supervisor at CHOP for her supervisor's signature before submitting them to her agency for payment. (N.T. 61-64) Respondent would then submit her timesheets to AMN in order to receive payment. (N.T. 61-64) AMN would then, based upon Respondent's timesheets, bill CHOP for services rendered by Respondent. (N.T. 61-64) Respondent's timesheets were the basis upon which she was paid. (N.T. 61-64)

In late June and early July of 2004, CHOP found a gross discrepancy in the amount of

hours being billed by Respondent, and the amount of hours Respondent was actually working. (N.T. 65-66) CHOP conducted an investigation of Respondent's work records, attendance, and billing timesheets for the period between January of 2003 and May of 2004. (N.T. 64-66) Respondent had billed CHOP for numerous hours where she did not actually work at CHOP. (Exhibit B-1; N.T. 74-80) Respondent had billed CHOP for "on-call" time, when Respondent never worked on that basis with the NICU. (Exhibit B-1; N.T. 74-80) Additionally, Respondent had billed CHOP for numerous hours of the higher pay rate for "call-back time," when Respondent never worked on that basis with the NICU. (Exhibit B-1; N.T. 74-80) In total, Respondent fraudulently submitted timesheets for approximately 1,892 hours that she never worked. (Exhibit B-1; N.T. 74-80) Respondent also submitted fraudulent timesheets where she had mischaracterized the type of hours worked (i.e., "call back time" instead of "straight time") on approximately 1,669 hours. (Exhibit B-1; N.T. 74-80) Respondent was paid on the basis of these timesheets. (Exhibit B-1; N.T. 74-80) In total, Respondent received approximately \$120,000.00 from CHOP and/or AMN to which she was not entitled during this seventeen (17) month period. (Exhibit B-1; N.T. 74-80)

Respondent would submit timesheets for approval by her supervisor at CHOP, and then change the timesheets before submitting them to AMN for payment. (Exhibit B-1; N.T. 74-80) CHOP then paid AMN based on bills received from AMN. (Exhibit B-1; N.T. 74-80) AMN based its bills on Respondent's timesheets. (Exhibit B-1; N.T. 74-80) AMN reimbursed CHOP \$185,000.00 billed to CHOP based upon Respondent's fraudulent timesheets. (Exhibit B-1; N.T. 74-80)

On January 21, 2005, as a result of having been criminally charged, Respondent received Accelerated Rehabilitative Disposition ("ARD") on the charge of Theft by Unlawful Taking or

Disposition, a misdemeanor, in the Court of Common Pleas of Philadelphia County docketed at Commonwealth v. Robyn Archer, No. 0592 CR 2004. (Exhibit R-4; N.T. 67-69) Under the terms of her ARD program, Respondent served two (2) years probation and restitution of \$120,000 to AMN Healthcare at \$2,500.00 per month. (Exhibit R-4; N.T. 46-48, 67-69)

At the hearing, the Respondent testified on her own behalf. The Respondent testified that in May 2004 after having been diagnosed with cancer and prior to being confronted regarding the timesheets, she ceased engaging in her fraudulent activity, prior to any investigation being conducted. She did not self-report, however, her actions. (N.T. 57, 65) Respondent was diagnosed with cancer in May 2004 and received surgical treatment. (N.T. 25) In February 2005 Respondent's cancer returned and the Respondent has not worked since then, having undergone chemotherapy, radiation treatment and interferon treatment. (N.T. 25)

With respect to her professional abilities, the Respondent also testified that for the period of January 2003 to January 2004, while employed at CHOP, she received a job performance appraisal that indicated that she meets expectations. (Exhibit R-2; N.T. 29-31) Additionally, from September 2004 to February 2005 she was employed as a nurse at the Lenkenau Hospital, where her performance was rated as an effective employee. (Exhibit R-3; N.T. 32, 73-74) However, after February 2005, Respondent was no longer able to continue employment because of her cancer and commensurate treatments. (N.T. 69, 73)

The Respondent also testified that contingent upon her health, she is anxious to return to the practice of nursing, to volunteer her time to support other cancer survivors, and to further her professional education by obtaining certification in neo-natal care. (N.T. 39-41, 70) Throughout her testimony the Respondent indicated that she is remorseful and takes responsibility for her actions, which were prompted by financial difficulties. (N.T. 41, 57, 61-64)

Additionally, the Respondent testified that she voluntarily completed an ethics course in nursing practice sponsored by the National Council of the State Boards of Nursing. (Exhibits R-5 and R-7; N.T. 41, 49) Furthermore, as of July 2005, early and with the assistance from her parents, she made the restitution required under her sentence. (N.T. 47, 51-52, 55-56, 67-69; Exhibits R-4 and R-8) In fact, the Respondent testified that as of August 18, 2006, she had successfully completed her probation and was anticipating taking action to expunge her criminal record. (Exhibit R-4; N.T. 46-47, 67-69) In closing, the Respondent testified that she is eager to return to the practice of nursing in order to provide care and to reimburse her parents who assisted her in making the required restitution. (N.T. 55, 70, 82-84)

The degree of proof required in establishing a case before an administrative tribunal is the same degree of proof used in most civil proceedings, i.e., a preponderance of the evidence. A litigant must satisfy its burden of proof with evidence that is substantial and legally credible, not with mere "suspicion" or by only a "scintilla" of evidence. Lansberry v. Pennsylvania Public Utility Commission, 578 A. 2d 600 (Pa. Cmwlth. 1990). The litigant's burden of proof before administrative tribunals, such as the Board, is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. (*Id.* at 601-02). Clearly, in light of the Commonwealth's motion having been granted and the Respondent's admissions, the Commonwealth has met its burden of proof. The only question that remains is an appropriate sanction, if any.

As noted earlier, the Commonwealth recommended that the Respondent should be subject to a five-year suspension, with all but one year stayed in favor of probation. By way of mitigation, the Hearing Examiner observed that at the hearing the Respondent presented herself in a professional manner, was remorseful and took full responsibility for her actions, which were

prompted by financial difficulties. (N.T. 41, 57, 61-64) Additionally, on her own volition, she voluntarily completed an ethics course in nursing practice sponsored by the National Council of the State Boards of Nursing. (Exhibits R-5 and R-7; N.T. 41, 49) The hearing examiner also notes that while employed, there was no question as to the Respondent's professional skill and competency.

Furthermore, as of July 2005, early and with the assistance from her parents, Respondent made the required restitution. (N.T. 47, 51-52, 55-56, 67-69; Exhibits R-4 and R-8) As of August 18, 2006, she had also successfully completed her probation and was anticipating taking action to expunge her criminal record. (Exhibit R-4; N.T. 46-47, 67-69)

Respondent filed a brief on exceptions to note discrepancies in the amount of money she actually received from AMN as differentiated from the amount AMN billed to CHOP. Respondent did not take exception to the proposed sanction. The hearing examiner recommended that Respondent's license be suspended for five years with only one year of active suspension and four years stayed in favor of probation.

Upon review of the entire record, the Board disagrees with the hearing examiner's recommendation. The Board views Respondent's actions as egregious and gives her mitigation little weight. Respondent's actions go against the high standards of the nursing profession. Nurses are entrusted with the care of the sick and elderly when they are at their most vulnerable. Nurses must be trustworthy. Nurses are also required to have good moral character. Respondent's conduct demonstrates a complete lack of morals. Moreover Respondent's theft removes financial resources from the healthcare system which in turn leads to the unavailability of those resources to provide and care for the patients Respondent is charged with caring for. Given Respondent's conduct and the large amount of money

involved as well as the lengthy period of time during which Respondent perpetrated her fraud, the Board has determined that Respondent's conduct warrants revocation of her license to practice professional nursing.

Accordingly, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF NURSING

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs.

v.

Robyn Archer Borrell, R.N.,
A/k/a Robyn Elizabeth Archer
Respondent

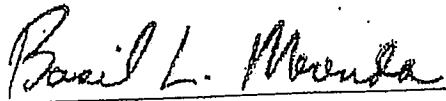
Docket No. 0613-51-06
File No. 04-51-07899

FINAL ORDER

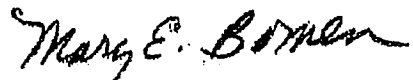
AND NOW, this *28th* day of June, 2007 in accordance with the foregoing findings of fact, conclusions of law and discussion, it is hereby ORDERED that Respondent Robyn Archer Borrell, R.N., License No. RN-543314, shall be REVOKED.

This order shall take effect on July , 2007, thirty days from the date it is deposited in the mail.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS


BASIL L. MERENDA
COMMISSIONER

BY ORDER:
STATE BOARD OF NURSING


MARY E. BOWEN, RN, CRNP
CHAIRPERSON

Respondent's Address:

Robyn Archer Borrell
550 Chester Pike, Unit D-1
Norwood, PA 19074

Prosecuting Attorney:

Shawn E. Smith, Esquire
2601 North Third Street, P.O. Box 2649
Harrisburg, PA 17105-2649

Board Counsel:

Carole L. Clarke, Esquire
2601 North Third Street, P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing:

June 28, 2007